

### **REMARKS / ARGUMENTS**

Claims 1-33 are pending in the instant application. Claims 1, 11-21 and 31-33 have been amended to clarify the claim language. Claims 11-20 and 32 are rejected under 35 U.S.C. 101 for allegedly directed to non-statutory subject matter. Claims 1-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over USP 7,225,247 ("Kennedy") in view of USPP 2003/0069975 ("Abjanic") and USP 5,920,566 ("Hendel"). Claims 31 and 33 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Applicant respectfully traverses these rejections at least based on the following amendments and remarks.

#### **I. Rejection of Claims 11-20 and 32 under 35 U.S.C. 101**

Claims 11-20 and 32 are rejected under 35 U.S.C. 101 for allegedly being directed to non-statutory subject matter. The Applicant respectfully disagrees. Nevertheless, claims 11-20 have been amended to recite "a non-transitory machine-readable storage", instead of "a machine-readable storage". The Applicant respectfully requests that the rejection to claims 11-20 and 32 under 35 U.S.C. 101 be withdrawn.

#### **REJECTION UNDER 35 U.S.C. § 103**

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

## **II. The Proposed Combination of Kennedy, Abjanic and Handel Does Not Render Claims 1-30 Unpatentable**

The Applicant now turns to the rejection of claims 1-30 under 35 U.S.C. 103(a) as being unpatentable over Kennedy in view of Abjanic and Hendel.

**A. Independent Claims 1, 11 and 21**

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103(a), the Applicant submits that the combination of Kennedy, Abjanic and Hendel does not disclose or suggest at least the limitation of “determining by said common switch at least a first identifier identifying said common switch, a second identifier identifying said first blade server, and at least a third identifier identifying said second blade server, wherein said first, second and third identifiers are located within a header portion of said received at least one packet,” or “modifying by said common switch said at least one packet from said first blade server by changing said first identifier within said header portion,” or “routing via said common switch, at least a portion of said modified at least one received packet from said first blade server to at least said second blade server, based on said header portion of said modified at least one received packet,” as recited by the Applicant in independent claim 1.

In the Office Action, the Examiner states the following:

“As per claims 1, Kennedy discloses a method for communicating information in a server, the method comprising: receiving at a common switch, at least one packet (Col 5 line 49-Col 6 line 11; Management controller 120 packetizes the information) from a first blade server of a plurality of blade servers, wherein said at least one packet is designated for at least a second blade server of said plurality of blade servers, and wherein said first blade server and said at least a second blade server are coupled to common switch via a common bus (Col 5 line 49- Col 6 line 11; Chassis management module 580 orchestrates the exchange of management information between blade servers 500 through 500G; Figure 5: Items 500A-500G).”

See the Office Action at pages 4-5. The Examiner relies on Kennedy's Fig. 5 to disclose the alleged "common switch", "first and second blade servers", "common bus" and "common bus". The Examiner concedes the following:

"Kennedy fails to disclose determining at least a first identifier identifying said common switch, a second identifier identifying said first blade server, and at least a third identifier identifying said second blade server, wherein said first, second and third identifiers are located within a header portion of said received at least one packet;"

See the Office Action at page 5. The Examiner looks to Abjanic to disclose Kennedy's above deficiencies, namely, the alleged respective "first, second and third identifiers located within a header portion of the received packet". The Examiner states the following arguments:

"Examiner asserts that Abjanic discloses per [0073], " Because content based message director 145 may be optional in some instances, switch 165 may switch the transformed message using address-based routing or switching techniques, such as **switching to a particular output port of switch 165** based on source and/or destination address and port numbers provided in the message or provided in a header of a packet carrying the message."

**The port number is equated as the initial destination address which is specified in the header of the packet as it serves as an identifier of the switch through which the message is routed through.** Examiner argues that the port number is an identifier of a switch. The port numbers, which refer to the physical ports of the switch, is equated as one of the multitude of identifiers of the switch. With respect to claim limitations that the first, second and third identifier are located in a header of a message, the above passage clearly states it per [0073], " such as switching to a particular output port of switch 165 based on source and/or destination address and port numbers provided in the message or provided in a header of a packet carrying the message" Therefore, the source, port number, and the destination address is equated as the first, second and third identifiers, and all three identifiers

are provided in the headers of the message as shown above. Examiner has addressed this argument in the previous office action as well."

See the Office Action at pages 2-3. The Examiner relies for support on Abjanic's Fig. 1 and 7, and equates Abjanic's data center 135, received content based message, switch 165 and servers 150-170 to Applicant's "server", "received at least one packet", "common switch" and "first and second blade servers", respectively. The Examiner also equates Abjanic's switch port number as the "initial destination address", which is specified in the header of the packet as it serves as "an identifier of the switch" through which the message is routed.

The Applicant disagrees and points out that Abjanic's received content based message received by the switch 145 (the alleged "common switch") cannot be equated to Applicant's "received at least one packet". Specifically, Abjanic discloses that the content based message is received externally to the data center 135 (the alleged "server"), instead of from one of the servers 150-170 (the alleged "first blade server"). In addition, even assuming arguendo, that the received message is the alleged "received at least one packet", the Applicant still maintains that the port number in the content based message (the alleged "received at least one packet") merely identifies the physical ports on the switch 145, without identifying the switch itself.

Based on the foregoing rationale, the Applicant maintains that Abjanic does not overcome Kennedy's above deficiencies, namely, Abjanic does not disclose or suggest "determining at least a first identifier identifying said common switch, a second identifier

identifying said first blade server, and at least a third identifier identifying said second blade server, wherein said first, second and third identifiers are located within a header portion of said received at least one packet,” as recited in Applicant’s claim 1.

The Examiner further concedes the following:

“Kennedy fails to disclose ... modifying said at least one packet from said first blade server by changing said first identifier within said header portion; and routing via said common switch, at least a portion of said modified at least one received packet from said first blade server to at least said second blade server, based on said header portion of said modified at least one received packet.”

See the Office Action at page 5. The Examiner looks to Hendel to disclose Kennedy’s above deficiencies, and further states the following arguments:

“Hendel discloses modifying said at least one packet from said first blade server by changing said first identifier within said header portion; and (abstract; modify the packets in hardware, including replace VLAN information, and forward the packets to the next hop, Col 8 lines 15-26; NEW VID address field 353 allows the MLDNE to be configured to support virtual LANs (VLANs). The associated data also includes a NEW VLAN identification (VID) TAG field, used to notify the subsystem of a need to change the packet’s VID, particularly when forwarding the packet across subnetworks)”

See the Office Action at page 5. The Examiner relies for support on Hendel’s Fig. 1 and 3, and equates Hendel’s multi-layer distributed network element (MLDNE) to Applicant’s “common switch”, and Hendel’s VLAN ID (VID) field 303 to Applicant’s “first identifier” (i.e., for identifying the common switch) in the header of the alleged “at least one packet from said first blade server”. The Examiner alleges that Hendel’s disclosure of replacing the VID field 303 with a new VID address field 353 is the same as

“modifying said at least one packet from said first blade server by changing said first identifier (i.e., for identifying the common switch) within said header portion,” as recited in Applicant’s claim 1.

The Applicant respectfully disagrees, and points out that the Examiner seems to have misconstrued Applicant’s “first identifier” (**which identifies the common switch which receives the packet**), as if any “identifier” within a packet header, such as Hendel’s VLAN ID (VID) (**which only identifies an external network**), to be modified. Therefore, the Applicant maintains that Hendel’s VLAN ID cannot be equated to Applicant’s “first identifier”.

In addition, the Applicant also points out that Hendel’s received packet also does not disclose the alleged “first, second and third” identifiers in the header portion. Hendel, likewise, also does not disclose that the packet received by the MLDNE (the alleged “common switch”) is initiated from one of the blade servers **within the server itself**. In this regard, Hendel also does not disclose the alleged “at least one packet from said first blade server”.

Based on the foregoing rationale, the Applicant maintains that Hendel does not overcome Kennedy’s above deficiencies, namely, Hendel does not disclose or suggest “modifying said at least one packet from said first blade server by changing said first identifier within said header portion,” as recited in Applicant’s claim 1. Based on the same rationale, Hendel consequently also cannot disclose or suggest “routing via said common switch, at least a portion of said modified at least one received packet from

said first blade server to at least said second blade server, based on said header portion of said modified at least one received packet,” as recited in Applicant’s claim 1.

Therefore, the Applicant maintains that the combination of Kennedy, Abjanic and Hendel does not establish a prima facie case of obviousness to reject Applicant’s claim 1. Claim 1 is, therefore, submitted to be allowable. Independent claims 11 and 21 are similar in many respects to the method disclosed in claim 1. Therefore, the Applicant submits that claims 11 and 21 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

**B. Dependent Claims 2-10, 12-20 and 22-30**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11 and 21 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Kennedy, Abjanic and Hendel has been overcome and request that the rejection be withdrawn. Additionally, claims 2-10, 12-20 and 22-30 depend directly or indirectly from independent claims 1, 11, and 21, respectively, and are, consequently, also respectfully submitted to be allowable.

**III. Objection to Claims 31 and 33**

Claims 31 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Applicant believes that the



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rejection of independent claims 1, 11 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Kennedy, Abjanic and Hendel has been overcome and request that the rejection be withdrawn. Additionally, claims 31 and 33 depend from independent claims 1 and 21, respectively, and are respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-33.

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-33 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and request that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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